

# The Nightingale's Rusty Key

A Material History of Theft in Old Regime France



Tom Hamilton



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This short article reflects on the interest and frustrations of researching a material history of theft in Old Regime France, based on an encounter with an alluring archival record. During the winter of 2016–17, I was working with the case bags of the Parlement of Toulouse, kept in the Archives départementales de la Haute-Garonne. On this trip I planned to begin a project on theft in Old Regime France that would bring together the social history of law with the cultural history of material objects.

I wanted to find out what theft cases might reveal about how people argued over their property, as well as the status that officials gave stolen property as a form of proof and an object of legal knowledge.<sup>1</sup> The records in Toulouse appealed to me particularly because of their scale and the quality of their conservation. Archivists have catalogued over 13,000 cases since these records entered their collection in the 1950s, when the pioneering work of Nicole and Yves Castan started to reveal the potential of these sources for the history of criminal justice and mentalities in the Old Regime.<sup>2</sup>

One morning in the departmental archives, when I sat down at the computers in the reading room to search the catalogue, I was intrigued by an entry noting that the case file 2 B 2736 contains ‘two case bags, one of which includes a key’. The case was instigated by Antoine Lerou, who in November 1685 denounced Gérard Picard and Arnaud Doizan from Agen for theft. The investigation began in Sainte-Colombe-en-Bruilhois, south-west of Agen, and then moved on appeal to the Parlement of Toulouse. I ordered the file immediately. When it arrived, I opened it to find two canvas case bags and bundles of papers labelled A to Y that documented the legal proceedings against Doizan and Picard, as well as a once-white leather pouch, tied with string, that contained a rusty key. What was the key doing there? Could this object bring me closer to the material life of the people of seventeenth-century Languedoc than any other record I had seen so far? Or was it rather an example of what Arlette Farge has called the ‘traps and temptations’ of criminal archives, whose allure can lead historians to believe too much in the reality effect of the complex and fragmentary legal proceedings that archivists have carefully preserved, catalogued, and brought before them?<sup>3</sup>



Fig. 1, 2: Conseil Départemental de la Haute-Garonne, Archives départementales, 2 B 2736. These images show the two case bags and the files labelled A to Y, as well as the key and its pouch.

When I started to read through the case files, and especially as I started to transcribe them from the photographs on the train home – which passed through the scene of the crime near Agen not long after leaving Toulouse – I looked in vain for any substantial discussion of the key, which appeared to be coincidental to the main substance of the trial. On my first reading, it seemed to me that the affair primarily focused on the actions and motivations of a pair of opportunist thieves at the moment

when they spotted their chance to seize a large sum of money. This is certainly how the young plaintiff Antoine Lerou presented the case on 9 November 1685 to Pierre Villeneuve, *consul* (judge) in Sainte-Colombe-en-Bruilhois, when he made the initial denunciation.<sup>4</sup> Lerou told Villeneuve that he was a young man who had just come back from a great adventure. Apparently aged fourteen at the time the investigations took place – on another occasion he said twelve, which made the judge note suspiciously that this is at least ‘what he said’ – Lerou had just returned from military service. He was a young member of the fearsome band of *dragonnades* (dragoons) ordered by Louis XIV’s secretary of state for war, François Michel Le Tellier, marquis de Louvois, to be billeted in Protestants’ households throughout France from 1681 in order to force them to convert. The *dragonnades* targeted the South West in particular, where many Protestant communities remained despite the increasing hostility of the regime. Lerou made a considerable profit from his billeting with a Huguenot family just outside of Bergerac, where the *dragonnades* arrived in August 1685.<sup>5</sup> When Lerou left his billeting he said that he took with him forty-six *écus* in cash as well as grain and linen that he planned to sell. He packed his loot onto a mule and headed home to see his mother on 5 November, soon after the Revocation of the Edict of Nantes on 22 October 1685 removed any legal protections for Protestants in the kingdom. After the Revocation, Lerou’s loot was secure in his possession because the Edict of Nantes was no longer in place to protect Protestants’ claim to property and religious liberty.

As Lerou headed home from Agen on 8 November, wearing a hat with a yellow trim and a silk sash that perhaps marked him out as a former soldier, he noticed that Doizan and Picard were following him. At Colayrac-Saint-Cirq, Lerou crossed the Garonne river and the two men took the same boat. Once he reached the other side of the river Lerou headed south towards Sainte-Colombe. But half-an-hour along the route Doizan and Picard threw Lerou off his mule and onto the ground, threatened to kill him, and seized all of the money he was carrying in his pockets, which Lerou listed precisely for the judges: ‘two double *louis d’or* and two ordinary *louis d’or*, one-hundred-and-twenty-six *écus*, five half-*sols*, two coins worth fifteen *sols*, one coin worth three *sols*, two coins worth five *sols* that are damaged, and twelve *sols* and six *deniers*’. Doizan, Picard, and Lerou then carried on the journey until they arrived at the end of the day in Sainte-Colombe, where they planned to spend the night in the tavern owned by the butcher and hosteller Étienne Dabos. Marie Bassière welcomed the travellers and seated them by the fire. Lerou excused himself from the group by offering to help her bring their dinner. But as soon as Lerou was away from Doizan and Picard he asked for directions to the local judge’s house, which is where he lodged his complaint for theft. Perhaps Lerou gambled that his loot from the Protestants of Bergerac sufficed to cover any legal fees that might arise.

Straightaway the *consul* Pierre Villeneuve acted on Lerou’s complaint and headed to the tavern accompa-

nied by his fellow *consul* Pierre Labadie, the *jurat* (town councillor) Jacques Bonhomme, and the guardsman Jean Gantié. When the group entered the tavern Lerou denounced Doizan and Picard by saying that ‘those men are the thieves who robbed me’. The consul Labadie told the pair to empty their pockets. Picard turned out ‘a key and a folding knife’ as well as a ‘a small, grey canvas bag’ and ‘a little purse in white and red leather’ that contained a sum which roughly matched the amount Lerou said he had lost. It seemed the magistrates had on their hands a classic case of what jurists would call manifest theft: they had caught the suspects in the act. Doizan also handed over ‘a piece of nutmeg, a large iron nail sharpened to a point, a key, and a knife’. The officials placed Doizan and Picard under arrest and then led them to the local prisons, where the doorman led them to a cell and the court scribe entered their possessions into the stores with an agreement ‘to retrieve them whenever the need arises’.

As the criminal proceedings against Doizan and Picard continued, the judges made little reference for the objects they had seized, although that did not mean the objects were without significance. When Lerou named the precise coins taken from him this mattered not only as an accounting measure but as a form of material proof. Any discrepancy between the oral and material evidence might have raised doubts about Lerou’s claims. Rather than reflect openly on these issues, however, the judges pressed on with the interrogations, first of the witnesses from the tavern, and second of the suspects themselves. According to the Roman law of proof, the judges sought a confession or the statements of two valid eyewitnesses, for oral testimony given under oath constituted the surest form of legal knowledge.<sup>6</sup> The judges’ assessment of the stolen goods and the scene of the crime could only be a secondary consideration that needed to conform to the oral evidence they had gathered if it was to have any use.<sup>7</sup>



Fig. 3: Sebastien Leclerc: *Figures à la mode* (Paris, 1685), Plate Two, 14.9 x 9.7 cm, engraving, Rijksmuseum, RP-P-2009-1078, <http://hdl.handle.net/10934/RM0001.COLLECT.482969> [29.10. 2021]. This engraving depicts a nobleman wearing a justaucorps jacket in the year the affair took place, and perhaps it also shows the look Antoine Lerou aspired to project.

During their interrogations, Doizan and Picard confirmed the details of Lerou’s account and confessed to seizing his money, but they gave a different meaning to the course of events. Picard, a lantern-carrier who lived in the parish of Saint-Hilaire in Agen, said that his apprentice Bernard Lapointe had spotted Lerou in the city buying a fashionable justaucorps jacket, spending far too much money for a boy of his age. They suspected he had stolen the money. Lapointe alerted Picard, and Picard’s wife alerted Doizan on the rue de Roussanes in the heart of the city. They initially followed Lerou, they insisted, in order to find out how he had come across so much money. And when they caught up with him after crossing the Garonne they accompanied him in order to take him home, saying ‘let’s go and find your mother’. They claimed to be enacting justice by bringing Lerou before the person best placed to discipline him. By taking charge of his money in the meantime they were simply looking after it for him as responsible adult travelling companions.

What role did the key play in these proceedings? It seems to have been incidental to the investigation, which fo-

cused instead on the reasons why Doizan and Picard pursued Lerou and the circumstances in which they stole his money. The tailor in Sainte-Colombe, Jean Dabot, told the judges that he had heard that Doizan's key was 'a little key that he said was the key to his father's house'. The judges gave more attention to a nail 'as if it were a nightingale (*en forme de rousignol*)' – according to the lexicographer Randle Cotgrave, a 'rosignol' might be translated as a 'picklocke'<sup>8</sup> – that Doizan was carrying in his pocket at the time of his arrest, but he said he only kept it 'out of neglect (*par oubly*)'. The question about the nail was the last one that the judges at Sainte-Colombe asked Doizan before they reached their final sentence and it perhaps confirmed their suspicion that he was a habitual thief.<sup>9</sup>

Once the interrogations were concluded the judges condemned both Doizan and Picard to the galleys in perpetuity, which was a severe sentence for a first offence. It suggests that the keys, nail, and knives they were carrying played a role in the judges' decision as tools of the thieving trade. The sentence also condemned the pair to pay 300 *livres* to the court and 300 *livres* to Lerou, and to return to him the 500 *écus* they stole, which the scribe in Sainte-Colombe had retained in the court's stores. Doizan and Picard appealed this sentence to the Parlement of Toulouse, and as part of the appeal the judges in Sainte-Colombe also sent along the key and leather pouch with the case files. It is possible that the magistrates in Toulouse took a different view of this material evidence, but the records of the proceedings during the appeal do not appear in the case bags.<sup>10</sup> Sometime after the magistrates in the Parlement reached their verdict, the knife, nail, and nutmeg that Doizan had with him seem to have been discarded, while the court retained the one remaining key and the white leather coin purse which – like the nail Doizan said he carried with him – they apparently did so only 'out of neglect'.

The case that Lerou instigated against Doizan and Picard was primarily a dispute over money, an affair rooted in material interests that raises a larger issue of the just ownership of property at a time of religious upheaval. The young Lerou signed up to join the *dragonnades* and after three months in Bergerac he set off home with the loot he had seized from persecuted Huguenots. The judges in Sainte-Colombe decided that Lerou's claim to their property was legitimate. Doizan and Picard might have targeted Lerou because they did not approve of this former *dragonnade* spending the money he had seized from a repressed religious minority, but there is no direct suggestion of this point in the case files, only their claim that they suspected him of theft and wanted to take him home to his mother. Perhaps the hundreds of Protestants also condemned to serve in the galleys around the time of the Revocation might have sympathised with their defence.<sup>11</sup>

The judges decided that Doizan and Picard were habitual thieves who sought money where they could find it. They at least did not seem desperately poor from the evidence provided. Picard declared he had a job as a lantern-car-

rier, although Doizan said that he ‘had no vocation because of his poor vision’. The judges in Sainte-Colombe did not hesitate to condemn the pair to a serious penalty and cast away their lives on the galleys, but they also expected them to have 600 *livres* available between them to pay the fines, aside from the money they had seized from Lerou.

Material things mattered in this case—hard cash in soft pouches, an eye-catching *justaucorps*, and a nightingale thief’s canvas bag of equipment. Overall, the rusty key apparently served along with other objects as supplementary evidence that contributed to the severe sentence because it suggested Doizan and Picard were habitual thieves who carried with them the tools of their trade. Ultimately, however, these objects did not act as a decisive form of proof in themselves, because the court relied on oral testimony as the principal source of legal knowledge.

The history of theft in the Old Regime is a history of material things: of stolen goods, keys, knives, nails, and miles of piles of case bags. But what I did not sufficiently appreciate when I initially travelled to the archives in Toulouse is that the history of theft also depends on much more than the goods themselves.<sup>12</sup> It also encompasses the material conditions and property regimes that governed people’s daily lives, the power of state officials and the records they produced, and sometimes also the odds and ends that they left behind. Old Regime France was a society characterised by profound inequalities that this case exposes at a time of significant upheaval. This society of orders and privileges legitimated the seizure of property by *dragonnades* from the Huguenots in 1685 but condemned to the galleys the men who stole from the former *dragonnade* himself.

The peculiar circumstances of this case open up larger questions that I did not sufficiently consider on my initial trip to Toulouse. Why would anyone denounce a theft to a criminal court when a prosecution could be so costly? What was the relative status of oral compared with material evidence as forms of legal knowledge? On what grounds might theft be considered legitimate? And how did successful prosecutions shape people’s sense of the authority of criminal courts?

The rusty key kept in this case bag out of neglect has led me to consider a new set of questions that will keep me occupied on many research trips to come. My reading of the case of Antoine Lerou’s prosecution of Arnaud Doizan and Gérard Picard as the train pulled away from Toulouse was initially one of disappointment at the derailing of a research project faced with the complexity of their dispute. Rereading it now, I still feel the allure of the archives – even while working with my digital photographs during a global pandemic – but the objects constituting this case also alert me to the larger histories of commerce, law, property, social inequality, and state formation that shaped its origins, proceedings, and ultimately its outcome.

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## Empfohlene Zitierweise/Suggested citation

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## Abstract

This short article reflects on the interest and frustrations of researching a material history of theft in Old Regime France, based on an encounter with an alluring archival record. A theft case tried in the Parlement of Toulouse in 1685 consists of two canvas case bags and bundles of papers, as well as a once-white leather pouch, tied with string, that contains a rusty key. What is the key doing there? Can this object bring us closer to the material life of the people of seventeenth-century Languedoc? Or is the key rather an example of what Arlette Farge has called the 'traps and temptations' of criminal archives, whose allure can lead historians to believe too much in the reality effect of the complex and fragmentary legal proceedings that archivists have carefully preserved, catalogued, and brought before them?

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- 1 These interests reflect conversations with Tom Johnson, who has opened up the field with his survey chapter: *Legal History and The Material Turn*, in: Markus D. Dubber and Christopher Tomlins (eds.): *The Oxford Handbook of Legal History*. Oxford 2018, pp. 497–514. It also draws on an engagement with the ongoing work of the 'Materialized Histories' group, including now: Susanna Burghartz, Lucas Burkart, Christine Göttler, and Ulinka Rublack (eds.): *Materialized Identities in Early Modern Culture, 1450–1750. Objects, Affects, Effects*. Amsterdam 2021 (*Visual and Material Culture, 1300–1700*).
- 2 Their major publications remain authoritative studies on the practice of justice in the Parlement of Toulouse as well as the social history of the wider region. Nicole Castan: *Justice et répression en Languedoc à l'époque des lumières*. Paris 1980; Yves Castan, *Honnêteté et relations sociales en Languedoc, 1715–1780*. Paris 1974. Thanks to a major digitalization project this catalogue is now available online: 'Sacs à procès du parlement de Toulouse', <https://archives.haute-garonne.fr/archive/recherche/sacsproces/n:109> [29.10.2021].
- 3 Arlette Farge: *The Allure of the Archives*, trans. Thomas Scott-Railton. New Haven and London 2013, pp. 69–78. For a brilliant demonstration of how to negotiate these 'traps and temptations', see Susanna Burghartz: *Tales of Seduction, Tales of Violence: Argumentative Strategies before the Basel Marriage Court*, in: *German History* 17/1 (1999), pp. 41–56.
- 4 For a map of the region, see Nicolas Sanson: *Nitiobriges. Eve-sché d'Agen. Seneschaussée d'Agenois. Eslection d'Agen* (Paris, 1679), 40.5 x 43 cm, engraving (coloured), Bibliothèque natio-

- nale de France, Arsenal, EST-1508 (165), <https://gallica.bnf.fr/ark:/12148/btv1b53179473h> [29.10.2021]. For an illustration of the roads out of Agen, see Chemin de St. Macaire à Thonneins, route de poste de Bordeaux à Toulouse (no place, 1740), one of two manuscript drawings (pen and watercolour), 400 x 1375 cm, Bibliothèque nationale de France, département Cartes et plans, GE C-18115, <https://gallica.bnf.fr/ark:/12148/btv1b53195520q> [29.10.2021].
- 5 On the experience of the *dragonnades* and the Revocation in Bergerac, see David Allen Pigott: Autonomy and Antagonism in Early Modern France: The Protestants of Bergerac, 1545–1685. Unpublished PhD thesis, Marquette University (2001), pp. 418–425, 486–500. Lerou’s testimony fits within the sequence of events surrounding the Revocation at this time.
  - 6 For an authoritative survey of the Roman law of proof, see Mirjan R. Damaška: Evaluation of Evidence: Pre-Modern and Modern Approaches. Cambridge 2018.
  - 7 On the use of crime scene evidence in theft cases, see Daniel Jousse: Traité de la justice criminelle de France, 4 Bände. Paris 1771: vol. iv, pp. 261–262.
  - 8 Randle Cotgrave: A Dictionarie of the French and English Tongues. London 1611: ‘Rossignol’.
  - 9 On nightingale keys, crowbars, and other instruments as aggravating factors in prosecutions for theft, see Jousse: Traité de la justice criminelle, vol. iv, p. 222.
  - 10 It might be possible to locate the verdict among the court’s registers of *arrêts*. The ongoing restrictions posed by the global pandemic have prevented me from returning to the archives in order to pursue this lead. In French justice, the magistrates of the *parlements* often revised on appeal excessively severe penalties given by subordinate courts.
  - 11 For an assessment of the number of Protestants condemned to the galleys around this time, see André Zysberg: Les galériens: vies et destins de 60 000 forçats sur les galères de France, 1680–1748. Paris 1987. pp. 102–111.
  - 12 Two studies of theft in the modern period make this point effectively: Arnaud-Dominique Houte: Propriété défendue: la société française à l’épreuve du vol XIXe–XXe siècles. Paris 2021. Rebekka Habermas: Diebe vor Gericht. Die Entstehung der modernen Rechtsordnung im 19. Jahrhundert. Frankfurt a. M. 2008.